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EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/077,973

Applicant(s)

TOMASI, ET AL

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 1, 2003

2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-5, 11-15, 17, 18, 22-24, and 28 is/are allowed.

6) Claim(s) 21 and 25-27 is/are rejected.

7) Claim(s) 6-10, 16, 19, and 20 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on Feb 20, 2002 is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on May 1, 2003 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

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Acknowledgments

1. The Amendment (paper 8) filed 5-1-2003 has been entered.

The Drawings Corrections (paper 6) filed 5-1-2003 has been entered into the file wrapper, but not approved by the Examiner, as the Drawing Corrections contain newly added figures 28-31 which constitute new matter, as set forth in this Office Action.

The Substitute Specification (paper 7) filed 5-1-2003 has not been entered, with the exception of the abstract, as the Substitute Specification contains new matter. Specifically, paragraph 0081 adds additional details related to the electrically driven transmission means of Figures 28 and 29 and the fluid-operated motion transmission means of Figures 30 and 31 which are considered new matter for reasons set forth in the Drawing Objection portion of this Office Action (paper 9). Note also that paragraphs 0040 and 0041 constitute new matter, as they are the drawing description paragraphs for new Figures 28-31. Since the Substitute Specification has not been entered, all specification objections made in the first Office Action (paper 5) are repeated in this Office Action. The Applicant should also be aware that one additional specification objection not present in the first Office Action has been included in this Office Action (paragraph 2.C.3). As noted, the Substitute Abstract has been entered, so the abstract objections made in this first Office Action are not repeated in this Office Action.

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Specification

2. The original disclosure is objected to because of the following:

A) The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

Note that sheet 11 incorporates a foreign patent by reference.

B) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

1) It is not clear why the sentence which begins with the word "Besides" on line 9 of sheet 1 begins on a new line, as if it is the beginning of a new paragraph.

2) The recitation of "...that will be better appear below..." on line 1 of sheet 2 is considered awkward.

3) Line 18 of sheet 3 recites "e".

4) The recitation of "It will be realize that also..." on line 1 of sheet 9 is considered awkward and also appears grammatically incorrect.

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5) While not strictly objectionable, Applicant may wish to consider whether the British variation spelling of the word "manoeuvre" on line 10 of sheet 5 is preferred.

C) The following inconsistencies in nomenclature were noted:

1) Lines 7 and 8 of sheet 4 recites "support rigid members or cases 4a and 4b".

Line 4 of sheet 5 and line 30 of sheet 10 recites "motion transmission means 4a and 4b".

2) Lines 3 and 4 of sheet 5 recites "centralized control device 9". Line 6 of sheet 5, line 33 of sheet 9 and line 1 of sheet 10 recites "driving device 9". Line 15 of sheet 5 recites "centralized driving device 9". Lines 7 and 9 of sheet 7 recites "trigger-like lever 9". Line 11 of sheet 7 recites "lever 9". Line 29 of sheet 10 recites "handle grip 9".

3) Line 8 of sheet 5 recites "end linking portion 8a". The last line of sheet 6 recites "support block 8a". The first line of sheet 7 recites "support member 8a". Line 21 of sheet 8 recites "support block 8a".

4) Line 11 of sheet 5 recites "steel cables 11". Line 29 of sheet 6 recites "sheathed cables 11".

5) Line 8 of sheet 6 recites "recess 85". Line 14 of sheet 6 and lines 10 and 11 of sheet 7 recites "opening 85".

6) Line 25 of sheet 6 recites "grip portion 8d". Line 22 of sheet 8 recites "Handle frame portion 8d".

7) Lines 26 and 33 of sheet 6 and line 21 of sheet 8 recites "support block 8a". Line 27 of sheet 7 recites "fixed portion 8a".

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8) Line 20 of sheet 7 recites "manual annular flanged member 9f". Line 23 of sheet 7 recites "annular component 9f".

9) Line 26 of sheet 7 recites "upper end 13c". Line 24 of sheet 8 and line 18 of sheet 9 recites "engaging tooth 13c". Line 30 of sheet 8 and line 26 of sheet 9 recites "tooth 13c".

10) Line 1 of sheet 8 recites "shank portion 86". Line 5 of sheet 8 recites "shank 86". Line 15 of sheet 8 recites "stem 86".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the motion transmission means comprises an electrically driven motion transmission means as recited in claim 26 and that the motion transmission means comprises fluid-operated transmission means as recited in claim 27 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Note that the Drawing Corrections (paper 6) added Figures 28-31 to overcome this drawing objection related to claims 26 and 27 which was also made in the last Office Action. However, Figures 28-31 added by paper 6 contain specific structural detail related to the electrical and fluid-operated motion transmission means that is not supported by the original disclosure and is therefore considered new matter. Due to this, the Drawing Corrections (paper 6) are not approved.

Claim Objections

4. Claims 6-10, 16, 19 and 20 are objected to because of the following:

A) Claim 6 recites “safety locking means”. The use of the term “safety” in this recitation is considered somewhat unclear.

Note that claims 7 and 8, by comparison simply recite “locking means”.

Note that claims 7-10 depend from claim 6.

B) The recitation of “resilient means” in claim 16 is believed to be more properly worded “resiliency means”, since to comply with 35 USC 112 6th paragraph, the term preceding the word “means” must express a function in order to have equivalents. The word “resiliency” more properly expresses a function, than the term “resilient”, or by way of example utilizing similar alternative wording, “means for resiliency” is better worded than “means for resilient”.

C) Claim 19 recites “the said”. This wording is considered redundant.

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D) Claim 19 recites "...said lever member ..shaped as an inclined plane". The term "lever member" is best understood to correspond to reference number 13. This characterization of the lever member shaped as an "inclined plane" is consistent with Figure 19.

However, claim 20 then recites "lever member is shaped as a bell crank". This recited phrase in claim 20 is objected to, as the "lever member" 13 does not appear to be "bell-shaped" in Figure 19. It is also not clear how the lever member can simultaneously be shaped as an "inclined plane" as recited in claim 19 and as a "bell crank" as recited in claim 20.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 26 and 27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claim 26 recites "...said motion transmission means comprises electrically driven motion transmission means".

Support for this recitation is only found by the Examiner in the last lines of sheet 10 which recites "...the connection between the handle grip 9 and the motion transmission means 4a,

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4b could be one of a number of mechanical means (e.g. struts, stay rods and various mechanical electromagnetic or pneumatic or hydraulic systems).

Note that this recitation does not even explicitly state "electrically driven motion transmission means". However, even if it had, it is still not believed that Applicant has satisfied the written description requirements of 35 USC 112 first paragraph.

The "written description" requirement requires that Applicant sets forth enough information regarding the claimed matter that one skilled in the art would conclude that the claimed matter had been actually or constructively reduced to practice at the time the invention was made. To the contrary, it would appear that Applicant has only "conceptually" considered an electrically driven motion transmission means, thus failing to meet the written description requirement of 35 USC 112 first paragraph. See Section 2163 of the MPEP.

Similarly, the recitation of "...said motion transmission means comprises fluid-operated transmission means" in claim 27, is also considered to fail to meet the written description requirement of 35 USC 112 first paragraph for similar reasons.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 21 and 25 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

A) Claim 21 recites "a bell crank is spring biased by a spring".

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Since the term "bell crank" does not appear to correspond to structure related to a reference number in the drawing figures, it is considered unclear what structure is being claimed by the recitation of "bell crank" or how the bell crank is biased by a spring.

Also note that the term "spring biased" in the above recitation would appear to be less awkwardly worded by simply instead using the word "biased".

Note that Section 608.01 (o) and 2173.05(a) of the MPEP requires that nomenclature used in the claims be apparent from the specification, unless it is apparent from the prior art.

Note that Section 608.01(g) of the MPEP also recites "The description is a dictionary for the claims and should provide clear antecedent basis for all terms used in the claims".

B) Claim 25 recites "wherein said strut component comprises at least one stay bar".

The term "strut component" is best understood to correspond to reference number 44. However, it is considered unclear what structure corresponds to the term "stay bar". Since the term "stay bar" does not appear to correspond to structure related to a reference number in the drawing figures, it is considered unclear what structure is being claimed by the recitation of "stay bar".

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Allowable Subject Matter

9. Claims 1-5, 11-15, 17, 18, 22-24 and 28 are allowed.
10. Claims 6-10, 16, 19 and 20 would be allowable if rewritten to overcome the claim objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
11. Claims 21 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph; set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Examiner's Comments

12. The Application is generally in a condition for allowance except for the formal matters set forth in this Office Action and the rejections of claims 26 and 27 under 35 USC 112 1st paragraph regarding the electrical or fluid operated motion transmission means lacking adequate written description. As noted, Applicant's attempts to overcome this rejection of claims 26 and 27, which are repeated from the first Office Action, by adding new drawing figures and additional text in the specification to support these figures, is considered to constitute new matter.

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Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Stevens - teaches folding mechanism for a wheelchair

15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


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6/14/03